?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 09.11.2018

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THE HON-BLE DR.JUSTICE G.JAYACHANDRAN

+W.P.(MD).No.189 of 2015
and M.P.(MD).No.1 of 2015

#D.Thiyagarajan .. Petitioner

~Vs~

$1.The State rep. by the Secretary,
Labour and Employment Department,
Government of Tamilnadu,
St. George Fort. Chennai ? 9.

2.The Director,
Directorate of School Education,
DPI Campus, 68, College Road,
Chennai ? 6.

3.The Joint Director,
Directorate of Non~Formal and Adult Education,
College Road, DPI Campus,
Chennai ? 6.

4.The District Educational Officer,
District Educational Office,
Pudukkottai ? 1. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent in his proceedings Mu.Mu.No.7307/A1/2007, dated 31.8.2010 and quash the same and directing the 2nd respondent to pass fresh orders respect to the appointment of the petitioner in compassionate grounds.

!For Petitioner : Mr.D.Selvanayagam
^For Respondents : Mrs.Srimathy
Special Government Pleader

:ORDER
This writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the 4th respondent in his proceedings Mu.Mu.No.7307/A1/2007, dated

31.8.2010 and quash the same and to direct the 2nd respondent to pass fresh orders respect to the appointment of the petitioner in compassionate grounds.

2.The writ petitioner herein is the son of one D.Dakshinamurthy who worked as Library Assistant at Government Model Higher Secondary School, Pudukkottai. The plea of the writ petitioner is that his father died in harness on 08.01.1982 after completing 9 years 3 months and 20 days of service as Library Assistant. At that time he was hardly two years old and his mother was severely affected by Parkinson-s decease with Dementia. Immediately after attaining majority, he requested the respondent herein to consider him for any post on compassionate ground and made his application on 11.10.1999 which was under consideration by the respondents for nearly 10 years and later on 31.08.2010, the application was rejected on the ground that the application for compassionate appointment has to made within a period of three years. Citing the Government letter (MS).No.202 Labour and Employment Department, dated 08.10.2007, wherein three years period be fixed from the date of death of the Government Servant for seeking compassionate appointment, the District Educational Officer, Pudukkottai has rejected the application of the writ petitioner. Challenging the said rejection order, the present writ petition has been filed seeking writ of Certiorarified Mandamus.

3.The respondents have filed their counter, wherein they point out the delay in making application by the writ petitioner for appointment under Compassionate ground and the laches in approaching the Court after passing the impugned order and sought for dismissal of the writ petition. It is also contended in the counter that the first legal heir Mrs.Kala, the wife of the deceased Government servant has not applied for appointment immediately after the death of her husband. She waited for his son to attain majority and thereafter applied for the post with a considerable delay. Hence, his request for compassionate appointment cannot be considered. Thus, there is no error in the impugned order.

4.At the out set, it is to be placed on record that this Court in its judgment on similar nature has held that G.O.Ms.No.202 Labour and Employment Department, dated 08.10.2007, prescribing three years time limit for applying for the post under compassionate ground, will apply to the cases where the Government servant died after 08.10.2007 and not for the persons who claim compassionate appointment of Government service who died prior to 08.10.2007. In this case, the father of the writ petitioner died on 08.01.1982 and therefore, the three years limitation cannot be applicable. However, from the records this Court finds that the writ petition is filed challenging the impugned order passed on 31.08.2010. The delay in filing the writ petition has not been explained in the affidavit. However, a better affidavit has been extended to be filed by the writ petitioner and draft was also circulated to this Court. This Court has taken note the draft better affidavit circulated by the learned counsel appearing for the petitioner and considered as to whether there is any reason and justification for four years delay in challenging the impugned order by way of the present writ petition. The Court cannot loose sight of the fact that while sympathetically considering the request of a citizen seeking compassionate

appointment in view of sudden demise of the bread winner, should also take note of the fact that by entertaining such application, the normal process of recruitment is given a go by. Unless and until the applicant deserves such an exceptional privilege Court should not unduly show mis~place sympathy. There is a case where unfortunately the father of the petitioner died when the petitioner was a toddler. At that time as contended by the respondent, his mother Mrs.Kala was eligible to seek for compassionate appointment. But, again misfortune to the family, it appears that Mrs.Kala was not medically fit to take up any employment. Therefore, after attaining majority, the petitioner herein has make requested for compassionate appointment in the year 1999 and after serious of communication his request has been rejected vide impugned order, dated 31.08.2010. Thereafter the petitioner herein has waited for four years.

5.According to the writ petitioner in his better affidavit, after completing S.S.L.C., he joined his Higher Secondary Course. His grandfather who took care of him and his mother, suddenly died in the year 1995. Hence, he could not continue his studies of P.G.D.C.A Course at Kongu College of Arts and Science. Due to his mother-s ill health and other financial constrains, he was not able to approach this Court in time. The petitioner and his family has suffered due to various reasons. But, in the considered view of this Court, these factors cannot over ride the enormous delay in seeking compassionate appointment before the authority or filing writ petition before this Court seeking relief. The present age of the petitioner is 37 years. His father died in 1982, nearly 35 years ago. Due to long lapse of period even a semblance of legitimate exception or right to claim compassionate appointment has got vanished. Hence, this Court is unable to consider the request made by the petitioner
challenging the impugned order of rejecting his request seeking compassionate appointment.

6.Accordingly, this writ petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

To

1.The Secretary, Labour and Employment Department,
Government of Tamilnadu, St. George Fort. Chennai ? 9.

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DPI Campus, 68, College Road, Chennai ? 6.

3.The Joint Director, Directorate of Non~Formal and Adult Education,
College Road, DPI Campus, Chennai ? 6.

4.The District Educational Officer, District Educational Office,
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